

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

ENFORCEMENT NOTICE

DATED: 21 DECEMBER 2017

To: The Secretary of State for Justice
Of: 102 Petty France
London
SW1H 9AJ

1. The Secretary of State for Justice is a "data controller" as defined in section 1(1) of the Data Protection Act 1998 ("DPA").
2. Section 4(4) of the DPA provides that, subject to section 27(1), it is the duty of a data controller to comply with the data protection principles in relation to all personal data with respect to which he is the data controller.
3. The Information Commissioner ("Commissioner") has considered a large number of requests for assessment by complainants made under section 42 of the DPA. They concerned the respective failure by the data controller to respond to subject access requests without undue delay, in compliance with the requirements of section 7 of the DPA.
4. In dealing with the requests for assessment and associated correspondence relating to the complainants, as well as correspondence and discussions with the data controller it became

apparent to the Commissioner that the data controller's internal systems, procedures and policies for dealing with subject access requests made under the DPA were unlikely to achieve compliance with the provisions of the DPA.

5. On 28 July 2017, the data controller had a backlog of 919 subject access requests from individuals, some of which dated back to 2012. The data controller's recovery plan involved eliminating the backlog by October 2018 and from 31 January 2018, dealing with any new subject access requests from individuals without undue delay. The Commissioner appreciates that some progress has been made to deliver this recovery plan.
6. An update was provided to the Commissioner on 10 November 2017 explaining that there were 793 cases over 40 days old, broken down as follows :-
 - 14 cases received in 2014 – due for completion by 31 December 2017
 - 161 cases received in 2015 – due for completion by 30 April 2018
 - 357 cases received in 2016 – due for completion by 31 August 2018
 - 261 cases received in 2017 – due for completion by 31 October 2018
7. The Commissioner has considered that the relevant provisions of the DPA are the sixth data protection principle and section 7.
8. The sixth data protection principle provides at part I of schedule 1 to the DPA that:

"Personal data shall be processed in accordance with the rights of data subjects under this Act."

9. Paragraph 8(a) of part II of schedule 1 to the DPA further provides that:

"A person is to be regarded as contravening the sixth principle if, but only if, he contravenes section 7 by failing to supply information in accordance with that section."

10. Section 7 of the DPA provides, amongst other things, as follows:

Subsection (1)

"Subject to the following provisions of this section and to sections 8, 9 and 9A, an individual is entitled –

(a) to be informed by any data controller whether personal data of which that individual is the data subject are being processed by or on behalf of that data controller,

(b) if that is the case, to be given by the data controller a description of –

(i) the personal data of which that individual is the subject,

(ii) the purposes for which they are being or are to be processed, and

(iii) the recipients or classes of recipients to whom they are or may be disclosed,

(c) to have communicated to him in an intelligible form –

(i) the information constituting any personal data of which that individual is the data subject, and

(ii) any information available to the data controller as to the source of those data, ...”

Subsection (2)...

Subsection (3)...

Subsection (4)

“Where a data controller cannot comply with the request without disclosing information relating to another individual who can be identified from that information, he is not obliged to comply with the request unless-

(a) the other individual has consented to the disclosure of the information to the person making the request, or

(b) it is reasonable in all the circumstances to comply with the request without the consent of the other individual.”

Subsection (5)...

Subsection (6)...

Subsection (7)...

Subsection (8)

"Subject to subsection (4), a data controller shall comply with a request under this section promptly and in any event before the end of the prescribed period beginning with the relevant day."

Subsection (9)...

Subsection (10)

"In this section-

'prescribed' means prescribed by the Secretary of State by regulations;

'the prescribed maximum' means such amount as may be prescribed;

'the prescribed period' means forty days or such other period as may be prescribed;

'the relevant day', in relation to a request under this section, means the day on which the data controller receives the request or, if later, the first day on which the data controller has both the required fee and the information referred to in subsection (3)."

Subsection (11)...

11. The Commissioner is of the view that the data controller has contravened the sixth data protection principle in that, contrary to section 7, he has failed to inform the individuals, without undue delay,

whether their personal data is being processed by or on behalf of the data controller and, where that is the case, failed, without undue delay, to have communicated to them in an intelligible form such information as may constitute such personal data.

12. Moreover, the Commissioner is of the view that the data controller is contravening the sixth data protection principle to the extent that the systems, procedures and policies in relation to him dealing with subject access requests submitted to the data controller are unlikely to result in compliance with those same requirements under the DPA.
13. The data controller has given no reasonable explanation for his failure to comply with any of the subject access requests referred to in paragraph 6 above within the requisite timescale.
14. The Commissioner considered, as she is required to do under section 40(2) of the DPA when deciding whether to serve an enforcement notice, whether any contravention has caused or is likely to cause any person damage or distress. The Commissioner takes the view that damage or distress to individuals is likely as a result of them being denied the opportunity of correcting inaccurate personal data about them, which may be processed by the data controller, because they are unable to establish what personal data are being processed within the statutory timescale.
15. The Commissioner has further taken account of the incorporation in English Law of the European Convention on Human Rights ("ECHR"), by virtue of the Human Rights Act 1998, in deciding whether or not to serve an Enforcement Notice. In particular, the Commissioner is

mindful of the provisions of Article 8 of the ECHR in that the individuals referred to in paragraph 6 above all have the right to respect for private and family life, home and correspondence which has been unlawfully interfered with by reason of the failure of the data controller to respond to subject access requests in compliance with the DPA.

In view of the matters referred to above the Commissioner hereby gives notice that, in exercise of her powers under section 40 of the DPA, she requires that the Secretary of State for Justice shall:

- 1) By 31 October 2018 at the latest, inform the individuals referred to in paragraph 6 above whether the personal data processed by him includes personal data of which those individuals (or any of them) are the data subjects and shall supply each of them with a copy of any such personal data so processed in accordance with the requirements of section 7 of the DPA and the sixth data protection principle in that respect, subject only to the proper consideration and application of any exemption from, or modification to, section 7 of the DPA provided for in or by virtue of part IV of the DPA which may apply.**

- 2) By 31 January 2018 at the latest, carry out such changes to its internal systems, procedures and policies as are necessary to ensure that all subject access requests received by the data controller, in respect of the data controller, pursuant to section 7 of the DPA are identified and are complied with in accordance with the**

requirements of section 7 of the DPA, and the sixth data protection principle in that respect, subject only to:

(a) the proper consideration and application of any exemption from, or modification to, section 7 of the DPA provided for in or by virtue of Part IV of the DPA which may apply; and

(b) the expectation that such requests are expressed with reasonable clarity and are properly addressed.

3) Continue to use his best endeavours to surpass the milestones referred to in paragraphs 1) and 2) above.

4) Provide the Commissioner with a progress report at the beginning of each month documenting in detail how the terms of this enforcement notice have been, or are being, implemented.

16. There is a right of appeal against this Notice to the First-tier Tribunal (Information Rights). Information about appeals is set out in the attached Annex 1.

Dated the 21 day of December 2017

Signed:

Elizabeth Denham
Information Commissioner

ANNEX 1

RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER

1. Section 48 of the Data Protection Act 1998 gives any person upon whom an enforcement notice has been served a right of appeal to the First-tier Tribunal (Information Rights) (the "Tribunal") against the notice.
2. If you decide to appeal and if the Tribunal considers:-
 - a) that the notice against which the appeal is brought is not in accordance with the law; or
 - b) to the extent that the notice involved an exercise of discretion by the Commissioner, that she ought to have exercised her discretion differently,the Tribunal will allow the appeal or substitute such other decision as could have been made by the Commissioner. In any other case the Tribunal will dismiss the appeal.
3. You may bring an appeal by serving a notice of appeal on the Tribunal at the following address:

GRC & GRP Tribunals
PO Box 9300
Leicester
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

The notice of appeal should be served on the Tribunal within 28 days of the date on which the enforcement notice was sent.

4. The statutory provisions concerning appeals to the First-tier Tribunal (Information Rights) are contained in sections 48 and 49 of, and Schedule 6 to, the Data Protection Act 1998, and Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (Statutory Instrument 2009 No. 1976 (L.20)).